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September 21, 2012

The Honorable Jocelyn Boyd  
Chief Clerk and Administrator  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, South Carolina 29210

RE: Nathan Phillips v. Duke Energy Carolinas, LLC  
Docket No.: 2012-331-E

Dear Mrs. Boyd:

Please find attached Duke Energy Carolinas, LLC's Motion to Dismiss Complaint and Request to Hold Testimony Filing Deadlines and Hearing Date In Abeyance Pending Resolution of Motion concerning the above-referenced matter.

Please feel free to contact me should there be any questions.

Very truly yours,

A handwritten signature in black ink, reading 'Timika Shafeek-Horton'.

Timika Shafeek-Horton,  
Deputy General Counsel

Attachment

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2012-331-E**

In re:	)	
	)	
	)	
Nathan Phillips,	)	<b>DUKE ENERGY CAROLINAS, LLC'S</b>
	)	<b>MOTION TO DISMISS THE</b>
Complainant,	)	<b>COMPLAINT AND REQUEST TO HOLD</b>
	)	<b>TESTIMONY FILING DEADLINES AND</b>
v.	)	<b>HEARING DATE IN ABEYANCE</b>
	)	<b>PENDING RESOLUTION OF MOTION</b>
Duke Energy Carolinas, LLC,	)	
	)	
Respondent.	)	

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Pursuant to S.C. Code Ann. Regs. 103-829 and applicable South Carolina law, Respondent, Duke Energy Carolinas, LLC ("Duke Energy Carolinas" or "Company") hereby moves the Public Service Commission of South Carolina ("Commission") to dismiss the above-captioned matter for lack of jurisdiction and for failure to state a claim upon which relief can be granted. Duke Energy Carolinas also respectfully requests that the Commission hold the testimony filing deadlines and hearing date, as set forth in the Schedule Order, in abeyance pending the Commission's review and consideration of the Company's motion. For the reasons set forth below, Duke Energy Carolinas respectfully submits that the Commission should dismiss the Complaint as a matter of law because it fails to assert any claims within the jurisdiction of the Commission, and does not articulate any claims upon which relief can be granted to the Complainant by this Commission.

## **BACKGROUND**

On September 6, 2012, Mr. Phillips filed a complaint with the Commission alleging that Duke Energy Carolinas failed to honor the terms of a deferred payment agreement that he entered into with the Company and, therefore, that he should not be held responsible for paying a portion of the charges for electricity used at his residence.

The Company's records show that Mr. Phillips was rendered a bill on July 17, 2012, for a total of \$706.52, of which \$305.68 was past due. The current charges on this bill would be past due after August 13, 2012. The bill included a notification to Mr. Phillips pursuant to S.C. Code Ann. Regs. 103-352 that he must pay \$305.68 by 5:00 p.m. on August 13, 2012 to avoid disconnection of service, and that after that date, the entire \$706.52 would be required to maintain or restore service. The Company generated an additional notice of disconnection, required under S.C. Code Ann. Regs. 103-352, on August 8, 2012, and mailed it to Mr. Phillips.

The Company's records show that Mr. Phillips contacted Duke Energy Carolinas on August 10, 2012 indicating he would be unable to pay the required \$305.68 by the required date, and requesting additional time to pay that amount. One point of possible confusion with Mr. Phillips during his call was a change in the amount owed because the Company had applied a deposit interest credit of \$20.42 to the account on August 4, 2012, reducing the total balance to \$686.10. The Company's representative informed Mr. Phillips that if he needed additional time to pay the past due balance, the entire amount owed at that time would need to be included in the agreement. As a result, the Company made a deferred payment agreement with Mr. Phillips to pay \$305.00 on August 15, 2012, and \$381.10 on September 17, 2012. Due to the relatively short term nature of the agreement, future bills were not specifically included in the agreement, but rather would become past due in the normal billing schedule.

After reviewing the telephone recordings of the conversation between Mr. Phillips and Duke Energy Carolinas' representative, the Company acknowledges that there was some apparent misunderstanding and miscommunication. The representative acknowledged that Mr. Phillips was due to receive another bill soon, but stated he did not know the date the next bill would be past due, and later during the call, the representative indicated to Mr. Phillips that he would not need to pay again until October 2012.

The Company believes the confusion occurred because there is a difference between the date when a bill is past due and the date by which a customer must pay to avoid disconnection. The Company now knows that the next bill was dated August 17, 2012 and was considered past due after September 10, 2012, but the customer was still under the terms of the deferred payment agreement. The next bill was dated September 17, 2012, the same day the payment was due under the payment agreement. This payment reduced the past due amount to a one-month arrears, a situation for which the Company does not discontinue service. Therefore, although the current charges on the August bill were past due after September 20, 2012, Mr. Phillips' account will not be subject to disconnection until October 2012, which is what the representative indicated. The Company regrets any misunderstanding about the dates that bills are rendered and become past due versus the date by which a customer must make a payment to avoid disconnection.

After Mr. Phillips contacted the South Carolina Office of Regulatory Staff ("ORS"), the Company offered to modify the then active deferred payment agreement or enter into a new agreement. Mr. Phillips rejected this offer. As a result, after the September 17, 2012 bill and last payment, Mr. Phillips owes the Company \$705.22, of which \$377.88 is past due. The current charges will become past due after October 12, 2012, and, therefore, mid-October is the

earliest date that Complainant's service would be subject to disconnection.

### **ARGUMENT**

For the reasons set forth below, the Commission should dismiss the Complaint.

#### **I. Failure to State a Claim.**

Duke Energy Carolinas respectfully requests that the Commission dismiss the Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action. Complainant seeks to be credited for electric service actually delivered to his residence as damages for a misunderstanding of the Company's billing and delinquency schedule. Because Complainant has not asserted a claim within the Commission's jurisdiction, the Commission must dismiss the Complaint.

As a matter of South Carolina law, the Commission does not have the authority to provide the relief sought by the Complainant. The Commission is statutorily charged with the supervision and regulations of rates and services of public utilities, *see* S.C. Code Ann. § 58-5-210 (Supp. 2009); *Kiawah Property Owners Group*, 359 S.C at 109, 597 S.E2d at 146, but has not been legislatively conferred with the power to order the remuneration of damages from one party to another under these circumstances. *See, e.g. Brenda Bryant v. Carolina Water Serv., Inc.*, Order No. 97-1003, Docket No. 97-358-W (Pub. Serv. Comm'n of S.C. Nov. 24, 1997). ("[T]his Commission has no statutory authority to order the payment of damages.") The Complaint does not contain any allegation of over-billing, either willful or inadvertent, or malfunctioning of Duke Energy Carolinas' equipment; the Complainant's request simply amounts to a request for the payment of damages by the Company based on a misunderstanding, and would result in such cost being borne by the Company's other South Carolina customers.

#### **II. The Testimony Filing Deadlines and Hearing Date Should Be Held In Abeyance Pending the Commission's Consideration of the Present Motion.**

As this motion seeks to adjudicate the basic merits of the Complaint on its face, Duke Energy Carolinas respectfully requests that the Commission hold the dates set forth in the Schedule Order, issued in the Docket on September 12, 2012, in abeyance pending its review of the motion. The Company submits that the filing of testimony by it, ORS, and the Complainant will be unnecessary if the motion is granted, and as such, the parties should only be required to proceed with such filings in the event the motion is denied.

### **CONCLUSION**

For the reasons set forth above, Duke Energy Carolinas respectfully requests that the Commission dismiss the Complaint in this Docket because it fails to state a claim subject to the Commission's jurisdiction, and it fails to state a claim upon which relief may be granted by this Commission.

This the 21st day of September 2012.

Respectfully submitted,

A handwritten signature in blue ink, reading "Timika Shafeek-Horton".

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DUKE ENERGY CAROLINAS, LLC